Recap

* We’ve established the difference between a claim-right and a privilege (“justification-right”)
  + Claim-rights entail duties, privileges just entail “no claims” – meaning you have no duty not to do it
  + You could never really have a functioning society with only privileges and no claim-rights
  + There are large areas of society that can function well with privileges, however
    - Usually circumscribed by claim-rights, which can make it seem like they are “rights” in the general sense
  + A society with no privileges and only claim-rights/corresponding duties seems overly stifling
* Powers
  + We’re not referring to acts (e.g. “X has a \_\_\_\_ with respect to Y concerning Act Z”), but to the ability to change other Hohfeldian rights
    - Specifically the ability to change claim-rights, privileges, and powers
  + Example: MSG gives student a coffee mug. MSG has used his power over the mug to give the student a claim-right to use the mug and eliminate his own claim-right; same thing for the powers concerning the mug.
  + Powers are not unlimited
    - The power to change your own property privileges, claim-rights and powers is limited, because you must find someone else who consents before you can exercise your power (“no one wants the junk car, so I’m stuck with it”). In other words, you have an immunity against yourself in the absence of another person’s consent to the thing
    - Inalienable rights cannot be given away
      * BUT, you can forfeit rights back to the government, which does look like you lose those rights (e.g. by committing a crime and getting sent to jail)
      * This has the odd quality of being the exercise of a power by violating a duty to someone else’s claim right (e.g. “I exercised power to forfeit my rights by violating my neighbor’s claim-right to not punch him in the face”) – punching him will also give him a claim-right to compensation and so is the exercise of a power in this sense too
        + Another example of exercising power via the violation of a duty is a legislature passing a law that is unconstitutional; the legislature has a duty to not pass a law that is unconstitutional, but if they do it anyway it is still enforceable until it is struck down; the law isn’t just a nullity (unless in extreme circumstances, maybe)
* Political revolutions violate duties to the previous government, but they do indeed exercise powers because they change everyone else’s claim-rights and privileges
* A “disability” is a lack of power

Ladensonian view: the legitimacy of a government is simply based on a Hohfeldian privilege to punish citizens for violating a law. Violation of a law, like stopping at a red light, is not a violation of a duty, but you can’t complain that your claim-right has been violated if the government punishes you. You may be privileged to resist the punishment however.

* is there a way of making sense of this idea…?
* POW camp example: prisoners have done nothing wrong by fighting for their country, so they have a privilege to try to escape; their escape is morally permissible. The German Kommandant also has a privilege to keep the POWs inside the camp; his keeping them in the camp is also morally permissible as is punishing them for escaping. They are in a constant morally permissible struggle where both parties understand that no duties are violated.
* Compare to a concentration camp, where the illegitimate Nazi government violates the claim-rights of its citizens to not be punished by an illegitimate power.
* How might a government actually function well by having only a privilege to punish?
  + If a legitimate government usually passes good, moral laws, punishment is all that is needed to keep society from devolving into a bad state of nature when there are a few bad laws that happen to also be passed
* This view is missing something, though; it seems like when people struggle to get out of prison, they are making a statement that the government is actually illegitimate; they aren’t just using their privilege to struggle, they are challenging the underlying assumption
* in addition, when the government punishes it seems like it is doing so because some duty has been violated
* Passage of a law in a Ladensonian universe as Applbaum describes it is not the exercise of a power at all. It leaves everyone morally where they were before. But it is the announcement that certain conduct will be punished (which is, already permissible)
* NOTE: Green worries that even in the Ladenson view the passage of a law is an exercise of a power – the punishment is not permissible until the law is announced. But this is still a weaker form of power than under the Applbaum view

Razian view: The authority the government has must be something more – the passage of a law creates a claim-right of the government. Those subject have a duty to obey.

* Rubbish example against the Ladenson view: if we grant a privilege to A to burn trash in his backyard, neighbors B and C can blow the smoke back. There is no duty of not to interfere in the exercise of the duty. Ladenson seems to say that this is the situation between government and its citizens, but that just seems inaccurate. Authority requires more than a privilege to punish.
* Instead of using a privilege, the government actually creates moral claim-rights against its citizens, who have duties to obey.

Applbaum’s Power-Liability account (middle ground between Ladenson & Raz)

* Legitimate government’s has a *moral* power, but that power is not necessarily one of creating moralclaim-rights for the government to obedience to the law and corresponding moralduties on citizens to obey the law
* Clamdigger & Beachowner Example
  + Clamdigger has used a path down to the water for generations, but when Beachowner buys the property through which the path goes he sues to exclude outsiders from using the path. The court finds for Beachowner wrongly - Beachowner gets the legal right to exclude and puts up a chain/no-trespassing sign.
    - In a Ladensonian universe, the decision by the government has not changed anyone morally. It is an announcement however that government will now punish Clamdigger for going on the property – and this punishment is permissible, though clamdigger is permitted to resist.
    - In Razian universe, the decision by the government is the exercise of a moral power – it has put a duty on clamdigger not to go on the property. Beachowner has a claim-right against clamdigger
    - In Applbaum’s universe, before the judgment Clamdigger had a moral claim-right against Beachowner to use the path, and Beachowner had a moral duty to not put up a chain. After the judgment Clamdigger has a moral privilege to use the path (although he has a duty to not damage the property), and Beachowner has a moral privilege to put up a chain (but not a moral claim-right against Clamdigger jumping over it). In this case, then, the government exercised its power to change moral claim-rights into moral privileges, but not to create new moral claim-rights/corresponding duties to obey the law.
* Stoplight Example
  + Razian answer: the government putting up a red light created a moral duty for citizens to obey; you violated a moral duty by driving through the red light
  + Ladensonian answer: you have a privilege to pass through the red light, and the government has a privilege to punish you. The light did not change anything morally. It was not the exercise of a moral power at all.
  + Applbaum’s answer: you don’t have a moral duty to stop at the red light (passing through is a privilege that is morally permissible), but you do have a moral duty to pay the fine (the legitimate government has a claim-right to your obedience concerning that)
    - This explains civil disobedience against a legitimate government quite well; Raz doesn’t leave much room for it, but Ladenson doesn’t explain the moral claim-rights/duties that seem to exist between a government and its citizens
    - 3rd countries can also interfere under this logic, while recognizing the legitimacy of the other government